

IDEA Section 605 Requests for Equipment or Facility Construction/Alteration

When a State requests the Secretary's approval to use IDEA Part B or C funds to purchase equipment¹ or to construct or alter a facility under IDEA section 605, the State must include certain information in its request. In responding to the request, OSEP will remind the State of specific compliance requirements under Education Department General Administrative Regulations (EDGAR) and the cost principles in Office of Management and Budget (OMB) Circular A-87, where applicable.

Equipment

The request must include a description of how the equipment purchase will improve, for Part C, the program of early intervention services and specifically benefit infants and toddlers with disabilities and, for Part B, the program of special education and specifically benefit children with disabilities. This description must include the details needed to support the reasonableness and allowability of the expenditure under applicable IDEA provisions and OMB Circular A-87, as codified in 2 CFR Part 225. See 20 U.S.C. 1404(a).

The letter responding to the request reminds the State that it must comply with all applicable requirements of the EDGAR, including but not limited to its responsibility to –

- a. Comply with EDGAR in 34 CFR §80.36(a) and (j) regarding procurement;
- b. Include in purchase orders or contracts for equipment any clauses required by Federal statutes and executive orders and their implementing regulations as required by EDGAR in 34 CFR §80.36(i); and
- c. Manage, maintain and disposed of equipment as required by EDGAR in 34 CFR §80.32.

Construction or alteration of facilities

The request must include:

1. A description of how the construction or alteration of the facility(ies) will improve, for Part C, the program of early intervention services and specifically benefit infants and toddlers with disabilities and, for Part B, the program of special education and specifically benefit children with disabilities. This description must include the details needed to support the reasonableness and allowability of the expenditure under applicable IDEA provisions and OMB Circular A-87, as codified in 2 CFR Part 225. See 20 U.S.C. 1404(a).

¹ For purposes of IDEA section 605, "equipment" is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that either equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5000. See 2 CFR Part 225, Appendix B, 15.a.

2. A description of the relationship of the proposed construction to and probable effect on any district, site, building, structure or object that is: (1) included in the National Register of Historic Places; or (2) eligible under criteria established by the Secretary of the Interior for inclusion in the National Register of Historic Places. See 34 CFR §§76.600(c) and 75.602.

The letter responding to the request reminds the State that it must comply with all applicable requirements of the IDEA, EDGAR, including but not limited to its responsibility to –

1. If construction or alteration of a facility is involved, comply with either (a) appendix A of part 36 of Title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”); or (2) appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”) (for non-residential facilities). See 20 U.S.C. 1404(b).
2. Comply with EDGAR in 34 CFR §80.36(a) and (j) regarding procurement;
3. Include in purchase orders and contracts any clauses required by Federal statutes and executive orders and their implementing regulations, including the Davis-Bacon Act, as required by EDGAR in 34 CFR §80.36(i);
4. Perform the functions that the Secretary performs under 34 CFR §§75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications). See 34 CFR §76.602(b).
5. Comply with the additional rules on construction in EDGAR in 34 CFR §§75.600 through 75.617 (which are incorporated by reference in 34 CFR §76.600), including but not limited to, the requirements to –
 - i. Have or obtain full title or other interest in the site, as provided in 34 CFR §75.603;
 - ii. Prior to advertising construction or placing construction on the market for bidding, approve the final working drawings and specifications. See 34 CFR §75.605(b);
 - iii. Comply with health and safety standards and Federal regulations regarding access by persons with disabilities. See 34 CFR §§75.609 and 75.610; and
 - iv. Begin work within a reasonable time after a construction grant is made, and complete construction within a reasonable time. See 34 CFR §§75.605(a) and 75.606.

(Note that as the purpose of 34 CFR §75.601 is to implement the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347), and the Council on Environmental Quality does not believe that NEPA applies to construction undertaken using IDEA Part B or Part C funds, OSEP does not require States to provide the information that otherwise would be required under 34 CFR §75.601.)